

AGRICULTURE

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Aquaculture Production Agricultural Management Practice

Proposed New Rule: N.J.A.C. 2:76-2A.11

Authorized By: State Agriculture Development Committee, Gregory Romano, Executive  
Director

Authority: N.J.S.A. 4:1C-10.4.

Calendar Reference: See summary below for explanation of exception to calendar requirement

Proposal Number: PRN 2004-294

Submit comments by October 1, 2004 to:

Gregory Romano, Executive Director

State Agriculture Development Committee

PO Box 330

Trenton, New Jersey 08625-0330

The agency proposal follows:

Summary

The State Agriculture Development Committee (Committee) proposes this new rule pursuant to the Right to Farm Act (Act), N.J.S.A. 4:1C-1 et seq. The Act provides commercial farms with protection against private and public nuisance suits and unduly restrictive municipal regulations.

To receive the protections of the Act, a farmer must be in compliance with agricultural

management practices (AMPs) promulgated by the Committee. The Act authorizes the SADC to adopt AMPs pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Proposed new rule N.J.A.C. 2:76-2A.11 sets forth an AMP for commercial aquaculture activities.

The proposed new rule incorporates by reference “Recommended Management Practices for Aquatic Farms,” a 2004 publication of Rutgers Cooperative Extension and the New Jersey Department of Agriculture, with a revision date of March 2004 (publication). This publication is the result of extensive research conducted by Rutgers Cooperative Extension, the New Jersey Department of Agriculture, and other State and federal permitting agencies. This research included a review of aquaculture-related literature, focus groups, and discussions with members of the aquaculture industry with specialized knowledge or expertise. The final draft of the publication was subject to a rigorous external review by leading aquaculture experts across the country.

“Recommended Management Practices for Aquatic Farms” is an important component in the development of the aquaculture industry in New Jersey as outlined in the 1995 State Aquaculture Development Plan and the 1997 New Jersey Aquaculture Development Act, N.J.S.A. 4:27-1 et seq. The publication addresses permits, construction, transportation, water resource management, native and non-native species, chemical and drug handling, bio-security, facility construction, health management practices, and other aquaculture agricultural management practices.

“Aquaculture” is defined in the Aquaculture Development Act as a form of agriculture involving

the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging, and marketing, and shall include, but is not limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting, and providing for protection from predators. N.J.S.A. 4:27-3. "Aquatic species" is defined as any species of fish, mollusk, crustacean, other aquatic invertebrate, amphibian, reptile or aquatic plant but is not limited to fish and fishes. *Ibid.*

In addition to incorporating "Recommended Management Practices for Aquatic Farms" by reference, the proposed new rule contains two qualifications. The first qualification is in recognition of the fact that the publication may not address all aquaculture activities or disputes that may arise on a farm. Thus, the proposed new rule states that if a County Agriculture Development Board (Board) or the Committee determines that the publication does not completely address an activity being considered for protection under the Act, the Board or Committee shall decide whether those aspects of the activity not addressed by the AMP constitute generally accepted agricultural operations or practices. In making such determinations, the Board or Committee may consult with the Aquaculture Technical Committee, a body of professionals with technical aquacultural expertise, as well as with the other agencies, organizations, and persons specified at N.J.A.C. 2:76-2.3(d). The Aquaculture Technical Committee was created by the Aquaculture Advisory Council, which was established by the Aquaculture Development Act.

The proposed new rule also states that all recommendations in the publication shall become mandatory requirements with which a farmer will have to comply to receive the protections of

the Act.

Rutgers Cooperative Extension and the New Jersey Department of Agriculture may revise this publication as changes in industry standards warrant. The proposed new rule does not include such future supplements and amendments. Future supplements and amendments will be reviewed by the Committee and adopted pursuant to the provisions of the Administrative Procedures Act.

It should be noted that to receive the protections of the Act, farms must also meet the Act's definition of "commercial farm," be in conformance with all relevant Federal or State rules or statutes, and not pose a direct threat to public health and safety. If an agricultural activity is not addressed by a promulgated AMP, the activity must conform with generally accepted agricultural management practices. Such a determination is to be made by the appropriate County Agriculture Development Board or the Committee.

As the Committee has provided a 60-day comment period on these proposed new rules, the rules are exempt from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### Social Impact

The proposed new rule will have positive social impact. Aquaculture presents an important opportunity for farmers and other rural landowners to remain competitive in a changing economic climate. Demand for high quality fish and seafood continues to rise, while wild harvests remain at a maximum sustainable yield. Development of aquatic farms along the coast

is also in the public interest; aquaculture is a use compatible with periodic flooding and can preserve flood hazard areas from the development that might otherwise result in significant property losses to the citizens of New Jersey. Bivalve shellfish require the highest water quality certification, and bivalve culture increases the ecological benefits derived from the filtering capacity of many filter-feeding organisms. Bivalve culture also adds to the biodiversity of coastal waters. Other states that have allowed their shellfish populations to decline are now spending millions to restore those resources. Aquaculture development is compatible with tourism and other recreational activities.

Adoption of the agricultural management practice will ensure that only responsible farmers will receive the protection of the Right to Farm Act. Municipal officials as well as neighbors of commercial farms are assured that commercial farm operators who comply with the AMP are adhering to established, recognized agricultural standards that have undergone the scrutiny of State agricultural and aquacultural experts as well as the general public.

The proposed AMP will also be used to resolve conflicts involving commercial farms. Any person or municipality aggrieved by an agricultural activity on a commercial farm is required to participate in a conflict resolution process set forth in the Act and associated regulations. The AMP will be the standard used by County Agricultural Development Boards and the Committee in determining whether a farm is entitled to the protections of the Act. The commercial farm will be protected from nuisance lawsuits and restrictive municipal regulations only if the Boards or Committee find that it is in conformance with the adopted AMP and meets the other eligibility criteria of the Act.

There is a significant social benefit for commercial farm operators in that if commercial farms utilize the adopted AMP, the potential for conflicts arising with farm neighbors will be minimized.

### Economic Impact

The proposed new rule will have a positive impact on the State economy. Full development of aquaculture is expected to yield a significant increase in annual sales revenue. Aquaculture development is also critical in economically stressed regions of southern New Jersey that have been hard hit by declines in fishery resources caused by population dynamics and disease problems. The Oyster Industry Revitalization Task Force estimates that the full development of aquaculture could result in a conservative return of \$24 million along the Delaware Bayshore. Similar aquaculture development efforts undertaken in Connecticut have resulted in the growth of a vibrant industry. Studies in other states have indicated that the dollars earned in fishery communities tend to stay within the communities, thus benefiting a variety of other businesses. Overall, expansion of the aquaculture industry in New Jersey is anticipated to provide new revenues, keep farmland acreage in production, increase of the number of aquatic leases, generate new jobs, and add to the food supply.

Providing Right to Farm protections to commercial aquaculture farms will help these farms stay in business and contribute to the economy of the State. The proposed AMP will also reduce the expense and time that is involved in the Right to Farm Act's conflict resolution process. The AMP will provide standards regarding accepted aquaculture agricultural management practices

for all parties to use as a comparative benchmark. While the costs associated with compliance with the agricultural management practice depend on a variety of factors including the size and type of aquaculture operation, they are not anticipated to be onerous to the commercial farm operator.

#### Federal Standards Impact

A Federal standards analysis is not required because the subject matter of the proposed new rule is governed by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and is not subject to any Federal requirements or standards.

#### Jobs Impact

It is estimated that New Jersey aquaculture can potentially support 10,000 new jobs. It is anticipated that aquaculture development can create new jobs and business opportunities for existing New Jersey farmers and commercial harvesters, as well as for members of the industries handling the processing, marketing, and distribution of aquatic products. Increasingly stringent fishery management regimes, decreasing stocks of traditional species, and growing international competition have significantly reduced employment opportunities in the traditional wild harvest fisheries and the processing/packaging industries that wild fisheries support. The growth of aquaculture can recapture some of these jobs. Aquaculture business development is especially critical in the small towns surrounding Delaware Bay that have been under severe economic stress since the decline of the oyster industry. By providing protection to responsible aquaculture farmers, the proposed AMP may contribute to the creation of new jobs in the industry.

### Agriculture Industry Impact

The proposed new rules will have a positive impact on the agriculture industry, as aquaculture is a developing and important component of agriculture in New Jersey. Aquaculture can provide an alternative source of income for farmers and other rural landowners faced with changing marketplaces and tighter profit margins. Fish and seafood are high value crops that can allow farmers to diversify. Aquaculture can also make effective use of existing farm ponds and provide a use for land not currently in production.

Providing Right to Farm protections to responsible commercial aquaculture operations will help ensure that aquaculture farms remain viable. Farms will be encouraged to follow the recognized standards set forth in the proposed AMP, and by doing so, the potential for conflicts between the farms and farm neighbors will be minimized.

### Regulatory Flexibility Analysis

Pursuant to N.J.S.A. 4:1C-9, if a commercial farm owner or operator voluntarily agrees to conform to adopted agricultural management practices and is in compliance with all other eligibility requirements, the commercial farm owner or operator will be protected from private and public nuisance lawsuits and municipal regulations. As such, any person or municipality aggrieved by a commercial agricultural operation will be required to participate in a conflict resolution process set forth in the Right to Farm Act and corresponding rules, N.J.A.C. 2:76-2.

The majority of land subject to protection under the Right to Farm Act is owned by small



businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules do not require a commercial farm to incur any costs in terms of reporting or recordkeeping, nor will commercial farms incur costs for reporting or recordkeeping if they choose to comply with the proposed AMP. The capital costs associated with compliance with the proposed AMP depends on a variety of factors, including, but not limited to, the size and type of commercial farm operation. Compliance with the rule will not require the commercial farm to employ professional services; accordingly, the rule will not require them to incur any costs for employment of professional services. If commercial farm operators desire the protections of the Right to Farm Act, the proposed new rule will provide them with accepted practices for commercial equine operations, but compliance with the AMP should not have an adverse economic impact on the operation.

#### Smart Growth Impact

These proposed new rule will contribute toward the achievement of New Jersey's smart growth goals by helping to develop renewable resources, improving water quality, and contributing to environmental diversity and the preservation of open space. For these reasons, the proposed rule is anticipated to have a positive impact on the State's Development and Redevelopment Plan.

Full text of the proposed new rule follows:

#### 2:76-2A.11 Aquaculture Agricultural Management Practice

(a) Pursuant to the authority of N.J.A.C. 1:30-2.2, the State Agriculture Development

Committee hereby adopts and incorporates by reference the manual entitled “Recommended Management Practices for Aquatic Farms,” published by Rutgers Cooperative Extension and the New Jersey Department of Agriculture in 2004, with a revision date of March 2004, as the agricultural management practice for aquaculture activities on commercial farms, with the following conditions:

1. If the Board or Committee determines that the publication “Recommended Management Practices for Aquatic Farms” does not completely address an agricultural activity being considered for protection under the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., the Board or Committee shall decide whether those aspects of the activity not addressed by the publication comply with generally accepted agricultural operations or practices.

- i. In making these decisions, the Board or Committee may consult with the Aquaculture Technical Committee, a body consisting of aquaculture professionals with technical expertise, as well as with the other agencies, organizations, and persons specified at N.J.A.C. 2:76-2.3(d).

2. All recommendations in “Recommended Management Practices for Aquatic Farms” shall become mandatory requirements with which a farmer must comply to receive the protections of the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

(b) Rutgers Cooperative Extension and the New Jersey Department of Agriculture will update its publication as changes in industry standards warrant. The adoption and incorporation by reference in (a) above does not includes future supplements and amendments.

(c) Copies of “Recommended Management Practices for Aquatic Farms” may be

obtained from the New Jersey Department of Agriculture, Fish and Seafood Development Program, PO Box 330, Trenton, NJ 08625, and from the Department's website at <http://www.state.nj.us/agriculture/rural/seafood/aquaculture.htm>.

---

Gregory Romano,  
Executive Director, SADC

---

Date